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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,636	07/17/2003	Mark Rule	CMXZ 2 00019	1860
7590	08/10/2004		EXAMINER	
Scott A. McCollister Fay, Sharpe, Fagan, Minnich & McKee, LLP 7th Floor 1100 Superior Avenue Cleveland, OH 44114-2518			BOYKIN, TERRESA M	
			ART UNIT	PAPER NUMBER
			1711	
DATE MAILED: 08/10/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/621,636	Applicant(s) RULE, MARK
	Examiner Terressa M. Boykin	Art Unit 1711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 26 July 2004.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-35 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-15 and 17 is/are rejected.
 7) Claim(s) 16 and 18-35 is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>7-17-03</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

Objected Claims

Claims 16, 18-35 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 17 and 1-15 are rejected under 35 U.S.C. 102(b) as being anticipated by USP 5846642 see abstract, cols. 1-4 and examples.

Applicants' claim 17 which is broadly defined claims a method of forming a polyester container for storing food or beverage comprising combining an additive selected from hydrous metal oxides and a molten poly(ethylene terephthalate) homopolymers or compoymers to form a treated material and molding said treated material to form said container.

Applicants' claim 1 is directed to a method for decreasing an aldehyde content of a polyester that comprises incorporating into the molten polyester an effective

amount of an additive that is capable of catalyzing a hydride-transfer reaction between an organic donor molecule and said aldehyde, said additive being disposed substantially through out said polyester.

However, USP 5846642 discloses a polyester A mainly composed of ethylene terephthalate and/or ethylene isophthalate, a thermoplastic elastomer mixed at a ratio by weight of 81:19 to 98:2 with the elastomer comprising particles having a particle size ratio of 2 to 100 is excellent not only in formability but also in act resistance and taste property, and hence ideal for application on to the inner faces of packages, containers, etc.

The polyester film for thermal lamination of the present invention is excellent in formability, adhesiveness, impact resistance and taste property as described before, and can be easily thermally laminated on to not only metallic substrates but also various other substrates such as paper sheets, plastic sheets, fibers and non-woven fabrics, for ideal use as containers and other products.

Moreover, in the production of the polyester film of the reference, additives such as antioxidant, plasticizer, antistatic agent, weather resistance improver, and end blocking agent can be used as the case may be. Moreover, it is preferable to add a known compatibility enhancing agent into the polyester-thermoplastic elastomer mixture layer, since higher compatibility assures higher impact resistance.

More particularly, the reference states specifically that it is preferable to add a germanium compound as a polymerization catalyst in any optional step before

the production of the polyester is completed. This can be achieved, for example, compound into the glycol component used as a starting raw material of the polyester. The reference discloses that the method for content in the polyester at 8% wt or less is not especially limited, but any method similar to any of the above mentioned methods for decreasing the aldehyde content of the copolymerized polyester can be adopted.

Thus, the reference discloses a container of polyethylene terephthalate prepared from the same components as claimed by applicants. The germanium compound may be combined as a catalyst which is capable of catalyzing a hydride transfer reaction as claimed. Thus in view of the above, there appears to be no significant difference between the reference and that which is claimed by applicant(s). Any differences not specifically mentioned appear to be conventional. Consequently, the claimed invention cannot be deemed as novel and accordingly is unpatentable.

Correspondence

Please note that the cited U.S. patents and patent application publications are available for download via the Office's PAIR. As an alternate source, all U.S. patents and patent application publications are available on the USPTO web site (www.uspto.gov), from the Office of Public Records and from commercial sources. Applicants may be referred to the Electronic Business Center (EBC) at <http://www.uspto.gov/ebc/index.html> or 1-866-217-9197.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Terressa Boykin whose telephone

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number is 571 272-1069. The examiner can normally be reached on Monday through Friday from 6:30am to 3:00pm.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. The general information number for listings of personnel is (**571-272-1700**).

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

tmb


Examiner Terressa Boykin
Primary Examiner
Art Unit 1711